

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**In the Matter of:**

**BIG FOOT TRANSPORTATION, INC.,  
DBA SPEEDWAY**

**Respondent.**

**Docket No. FMCSA-2007-28014<sup>1</sup>  
(Midwestern Service Center)**

**ORDER REQUESTING THE FILING OF A MOTION FOR FINAL  
ORDER OR STATUS OF PROCEEDING**

**1. Background**

On February 1, 2007, Claimant, the Field Administrator for the Midwestern Service Center, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim (NOC) to Respondent, Big Foot Transportation Inc., dba Speedway, proposing a civil penalty of \$65,420 for alleged violations of the Federal Motor Carrier Safety Regulations (FMCSRs). Specifically, the NOC, which was based on a December 20, 2006, compliance review, charged Respondent with: (a) two violations of 49 CFR 382.305(b)(2), failing to conduct random controlled substances testing at the appropriate annual rate, with a proposed civil penalty of \$7,710 per count; and (b) 50 violations of 49 CFR 395.8(e), false reports of records of duty status, with a proposed civil penalty of \$1,000 per count.<sup>2</sup>

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<sup>1</sup> The prior case number was NE-2007-0021-US1184.

<sup>2</sup> See Exhibit A to Field Administrator's Objections to Respondent's Request for Hearing (Claimant's Objections to Hearing). Claimant alleged that this is the third enforcement case involving Respondent within six years for violations of 49 CFR Part 395, and the previous two included admissions of Part 395 violations. As a result, Claimant proposed the maximum civil penalties pursuant to § 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA).

On February 20, 2007, Respondent replied to the Notice of Claim, requesting a formal hearing.<sup>3</sup> Respondent denied all 52 alleged violations. With respect to the alleged violations of § 382.305(b)(2), Respondent stated that: (1) it had tested the required number of drivers; and (2) the proposed penalty was excessive. With respect to the alleged violations of § 395.8(e), Respondent contended that: (1) it was not negligent in failing to detect the alleged false documents; (2) the documents relied upon to establish the violations have not been shown to be accurate; (3) any inaccuracies in records of duty status were attributable to inadvertent driver error rather than deliberate falsification; (4) Respondent is not liable for violating § 395.8(e) based on errors made by its drivers; and (5) Claimant improperly calculated the proposed civil penalty by, among other things, incorrectly applying § 222 of MCSIA and failing to take into consideration pre-NOC corrective action.

On April 20, 2007, Claimant submitted his Objections to Respondent's Request for Hearing. He asserted that: (1) the evidence clearly demonstrates that Respondent had a system for checking driver logs; (2) the false records were not the result of simple driver error; (3) the violations were supported by numerous documents; (4) Respondent relied upon the very documents it characterized as unreliable to check logs for hours-of-service violations; (5) § 222 of MCSIA was properly applied; and (6) the alleged violations of Part 382 were supported by documentation, including a statement given by one of Respondent's officials. Claimant gave notice of his intent to file a Motion for Final Order. Almost two years later, however, no Motion for Final Order has been filed.

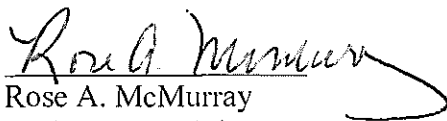
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<sup>3</sup> See Exhibit B to Claimant's Objections to Hearing.

## 2. Discussion

Although the revised Rules of Practice do not provide a deadline for filing a Motion for Final Order following the filing of an objection with basis to a request for a formal hearing,<sup>4</sup> Claimant's objection with basis, which set forth the relevant issues in this case and thoroughly responded to the arguments in Respondent's Reply, should have enabled Claimant to submit his Motion for Final Order within a reasonable amount of time. One of the stated goals of the Agency is to "prevent cases from falling through the cracks due to lags in procedural responses."<sup>5</sup> Accordingly, within 30 days of the service date of this Order, Claimant should either submit a Motion for Final Order or provide the status of this proceeding for the record.

*It Is So Ordered.*



Rose A. McMurray  
Assistant Administrator  
Federal Motor Carrier Safety Administration

4-3-05  
Date

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<sup>4</sup> See 49 CFR 386.16(b)(3).

<sup>5</sup> See 70 Fed. Reg. 28467, 28473 (May 18, 2005).

**CERTIFICATE OF SERVICE**

This is to certify that on this 7<sup>th</sup> day of April, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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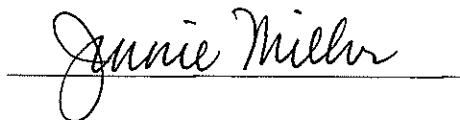
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